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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/533,361	03/22/2000	Beatrice Toumi	6388-0501-0	9261

7590

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EXAMINER

WELLS, LAUREN Q

ART UNIT

PAPER NUMBER

1619

DATE MAILED: 12/21/2001

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/533,361

Applicant(s)

TOUMI ET AL.

Examiner

Lauren Q Wells

Art Unit

1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 11-22 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 11-22 and 24-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 1-3, 11-22 and 24-26 are pending. Claims 4-10 and 23 were cancelled by the Amendment received November 30, 2001. Claims 24-26 were amended by the Amendment received November 30, 2001.

Response to Applicant's Arguments/Amendment

The Applicant's arguments filed November 30, 2001 (Paper No. 11) to the rejection of claim 21 made by the Examiner under 35 USC 112 have been fully considered and deemed not persuasive.

Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

112 Rejection Maintained

The rejection of claim 21 under 35 U.S.C. 112 is MAINTAINED for the reasons set forth in the Office Action mailed August 15, 2001, Paper No. 9, and those found below.

Applicant argues in regard to the phrase "lipolytic, slimming, firming, antiglycant and/or vasoprotective compounds" in claim 21 (line 5), that these terms are expressly disclosed and defined in the specification. As the Examiner is unable to find support for this statement, this rejection is maintained.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 11-21 and 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Sebag et al. (WO 96/03155).

Sebag et al. teach washing and conditioning compositions containing silicone and dialkyl ether. Disclosed is a foaming composition for washing and conditioning keratinous materials, particularly hair and/or skin. Disclosed is a polymer comprising 50-90% tert-butyl acrylate, 0-40% acrylic acid, and 5-40% of the silicone macromer of formula (III) of the instant invention. Further disclosed polysiloxane units are polyorganosiloxanes containing thiol groups. Conditioning compositions for keratinous materials encompasses the treatment of wrinkles, aging, and tightening of the skin, as a conditioning composition has beneficial anti-aging effects on the skin. See Col. 1, line 7-Col. 7, line 10; Col. 17, line 17-Col. 24, line 10.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 11-19, 21 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubief (6,011,126) in view of Sebag et al.

Dubief et al. teach compositions for treating keratinous material, including at least one silicone-grafted polymer and uses thereof. Disclosed is a grafted silicone polymer comprising from 0-98% of at least one lipophilic monomer, from 0-98% of at least one polar hydrophilic monomer, and from 0.01-50% of at least one polysiloxane macromer. Disclosed as a particularly preferred embodiment of the invention is a polymer with a

polysiloxane backbone grafted by at least one non-silicone organic monomer, wherein the polymer comprises the result of a radical copolymerization between, on the one hand, at least one anionic non-silicone organic monomer exhibiting an ethylenic unsaturation and, on the other hand, a silicone exhibiting, in its chain, at least one functional group capable of reacting with the said ethylenic unsaturations of the said non-silicone monomers with the formation of a covalent bond. Formula (III) and formula (IV) of the instant invention are disclosed as polysiloxane macromers. A copolymer comprising 60% tert-butyl acrylate, 20% acrylic acid, and 20% of a silicone macromer for formula (III) is disclosed. See Col. 2, line 55-Col. 18, line 15. The reference fails to teach the composition as anti-aging.

Sebag et al. is disclosed as discussed above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Dubief using the teachings of Sebag et al. and obtain a composition for treating aging because a) Dubief and Sebag teach compositions comprising the exact same grafted silicone polymers as active agents; b) Dubief teaches his composition as a dermatological composition for the treatment of keratinous substances, though he does not specify it for anti-aging, and; c) Sebag teaches his composition as a conditioning dermatological composition for the treatment of keratinous substances. Hence, it would have been obvious to teach Dubief's composition as an anti-aging/conditioning composition.

Claims 1-3, 11-22, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sebag et al. in view of Sidhu (4,963,353).

Sebag et al. fail to teach preferred plant proteins (see above discussion).

Sidhu teach biological extracts for regenerating/tightening the skin. The inventions is directed toward algal extracts and the background discloses horse chestnut extract. See Col. 1, line 10-Col. 8, line 10.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the composition of Sebag by adding the plant protein of Sidhu because a) Sebag and Sidhu both teach cosmetic compositions that provide benefit to the skin and hair; b) Sebag teaches that proteins and protein hydrolysates can be added to the composition.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on T-F (6-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana L Dudash can be reached on (703) 308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw
December 19, 2001



DAMERON L. JONES
PRIMARY EXAMINER